

AMENDED IN SENATE APRIL 17, 2013

SENATE BILL

No. 453

Introduced by Senator Huff

*(Coauthors: Senators Anderson, Berryhill, Emmerson, Fuller, Gaines,
Knight, Nielsen, Walters, and Wyland)*

February 21, 2013

An act to amend Sections 14501, 44662, 44955, and 44956 of, to amend and repeal Section 44660 of, and to add Sections 44660.5, 44955.1, and 44955.2 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as amended, Huff. School employees: teachers: evaluation: termination.

(1) Existing law expresses the intent of the Legislature that governing boards of school districts establish a uniform system of evaluation and assessment of the performance of all certificated personnel of a school district, including schools conducted or maintained by county superintendents of education. ~~Existing law prohibits the evaluation and assessment of certificated employee performance from including the use of publishers' norms established by standardized tests.~~

This bill would instead require the governing board of a school district to establish an evaluation and assessment system for certificated employees that uses a multiple-measures evaluation system with multiple research-validated approaches to measuring effectiveness, as specified. The governing board would be required to establish the system by the 2015–16 school year, and to fully implement the system by the 2016–17 school year, ~~and would require the Superintendent of Public Instruction to institute fiscal penalties for noncompliance. The bill would delete~~

~~the provisions prohibiting the use of publishers' norms established by standardized tests in evaluating and assessing certificated employees. The bill would require a compliance audit to include the verification of the development and implementation of the evaluation system. Because the bill would increase the duties of school districts, it would impose a state-mandated local program.~~

(2) Existing law provides that, when employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with preferred right to reappointment and opportunity for substitute service in order of seniority. Existing law authorizes a school district to deviate from the order of seniority for those purposes for specified reasons, including compliance with constitutional requirements related to equal protection of the laws.

This bill would provide additional reasons for which a school district may deviate from terminating employees in order of seniority, including authorizing school districts to terminate employees on the basis of performance evaluations and on the basis that the employee is assigned to a schoolsite that has been selected by the governing board for exemption from certificated reductions in force, based upon the needs of the educational program. The bill would provide an exception to this authorization for an employee who has 18 months or less from his or her date of retirement, or is on medical leave. The bill would specify that the equal protection exception to the general requirement that terminations and reappointments occur in order of seniority applies to equal protection as it relates to pupils.

(3) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment, and requires charter school petitions to contain certain information relating to employment.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, without regard to years of service.

(4) This bill would make various nonsubstantive and clarifying changes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14501 of the Education Code is amended
2 to read:

3 14501. (a) As used in this chapter, “financial and compliance
4 audit” shall be consistent with the definition provided in the
5 “Standards for Audits of Governmental Organizations, Programs,
6 Activities, and Functions” promulgated by the Comptroller General
7 of the United States. Financial and compliance audits conducted
8 under this chapter shall fulfill federal single audit requirements.

9 (b) As used in this chapter, “compliance audit” means an audit
10 that ascertains and verifies whether or not funds provided through
11 apportionment, contract, or grant, either federal or state, have been
12 properly disbursed and expended as required by law or regulation
13 or both and includes the verification of each of the following:

14 (1) The reporting requirements for the sufficiency of textbooks
15 or instructional materials, or both, as defined in Section 60119.

16 (2) Teacher misassignments pursuant to Section 44258.9.

17 (3) The accuracy of information reported on the School
18 Accountability Report Card required by Section 33126. The
19 requirements set forth in paragraphs (1) and (2) and this paragraph
20 shall be added to the audit guide requirements pursuant to
21 subdivision (b) of Section 14502.1.

22 (4) The development and implementation of the teacher-~~and~~
23 ~~principal~~ evaluation system required pursuant to Section 44660.5.

24 SEC. 2. Section 44660 of the Education Code is amended to
25 read:

26 44660. (a) It is the intent of the Legislature that governing
27 boards establish a uniform system of evaluation and assessment
28 of the performance of all certificated personnel within each school
29 district of the state, including schools conducted or maintained by
30 county superintendents of education. The system shall involve the
31 development and adoption by each school district of objective

1 evaluation and assessment guidelines which may, at the discretion
2 of the governing board, be uniform throughout the district or, for
3 compelling reasons, be individually developed for territories or
4 schools within the district, provided that all certificated personnel
5 of the district shall be subject to a system of evaluation and
6 assessment adopted pursuant to this article.

7 (b) This article does not apply to certificated personnel who are
8 employed on an hourly basis in adult education classes.

9 (c) This section shall become inoperative on July 1, 2015, and,
10 as of January 1, 2016, is repealed, unless a later enacted statute,
11 that becomes operative on or before January 1, 2016, deletes or
12 extends the dates on which it becomes inoperative and is repealed.

13 SEC. 3. Section 44660.5 is added to the Education Code, to
14 read:

15 44660.5. (a) (1) By the 2015–16 school year, the governing
16 board of a school district shall establish a uniform system of
17 evaluation and assessment of the performance of all certificated
18 employees within the school district, and shall fully implement
19 the system by the 2016–17 school year. The system shall clearly
20 define a rigorous, transparent, and fair multiple-measures
21 evaluation system for ~~both teachers and principals~~, and shall
22 involve the development and adoption by the governing board of
23 objective evaluation and assessment guidelines. All certificated
24 employees of the school district shall be subject to a system of
25 evaluation and assessment adopted pursuant to this article, except
26 that this article does not apply to certificated employees who are
27 employed on an hourly basis in adult education classes.

28 (2) This article applies to the county superintendent of schools
29 and the employees of schools conducted or maintained by the
30 county superintendent of schools.

31 (b) For purposes of this section, a “multiple-measures evaluation
32 system” is a ~~teacher and principal~~ evaluation system that uses
33 multiple research-validated approaches to measuring effectiveness,
34 including the measures specified in Section 44662. A school district
35 evaluation system also shall include a quantitative pupil academic
36 achievement growth component that shall constitute at least 30
37 percent of the overall ~~teacher and principal~~ effectiveness measure.
38 *A school district may use other measures of student performance*
39 *in subjects for which quantitative measures of student growth are*
40 *not available.*

1 (c) ~~(1)~~—The requirement to develop and implement the
2 evaluation system shall be subject to the annual audits, conducted
3 pursuant to Section 14501, commencing with the 2015–16 fiscal
4 year.

5 ~~(2) The Superintendent shall institute fiscal penalties for~~
6 ~~noncompliance with this section. Fiscal penalties shall include,~~
7 ~~but not be limited to, withholding 10 percent of the school district~~
8 ~~or county office of education apportionments. This withholding~~
9 ~~shall be returned to the school district or county office of education~~
10 ~~once the evaluation system required by this section is implemented.~~

11 SEC. 4. Section 44662 of the Education Code is amended to
12 read:

13 44662. (a) The governing board of each school district shall
14 establish standards of expected pupil achievement at each grade
15 level in each area of study.

16 (b) The governing board of each school district shall evaluate
17 and assess certificated employee performance as it reasonably
18 relates to:

19 (1) The progress of pupils toward the standards established
20 pursuant to subdivision (a) and, if applicable, the state adopted
21 academic content standards as measured by state adopted criterion
22 referenced assessments.

23 (2) The instructional techniques and strategies used by the
24 employee.

25 (3) The employee’s adherence to curricular objectives.

26 (4) The establishment and maintenance of a suitable learning
27 environment, within the scope of the employee’s responsibilities.

28 (c) The governing board of each school district shall establish
29 and define job responsibilities for certificated noninstructional
30 personnel, including, but not limited to, supervisory and
31 administrative personnel, whose responsibilities cannot be
32 evaluated appropriately under the provisions of subdivision (b)
33 and shall evaluate and assess the performance of those
34 noninstructional certificated employees as it reasonably relates to
35 the fulfillment of those responsibilities.

36 (d) Results of an employee’s participation in the Peer Assistance
37 and Review Program for Teachers established by Article 4.5
38 (commencing with Section 44500) shall be made available as part
39 of the evaluation conducted pursuant to this section.

1 (e) *The evaluation and assessment of certificated employee*
2 *performance pursuant to this section shall not include the use of*
3 *publishers' norms established by standardized tests.*

4 (e)

5 (f) This section does not limit the authority of the governing
6 board of a school district to develop and adopt additional evaluation
7 and assessment guidelines or criteria.

8 SEC. 5. Section 44955 of the Education Code is amended to
9 read:

10 44955. (a) A permanent employee shall not be deprived of his
11 or her position for causes other than those specified in Sections
12 44907 and 44923, and Sections 44932 to 44947, inclusive, and a
13 probationary employee shall not be deprived of his or her position
14 for cause other than as specified in Sections 44948 to 44949,
15 inclusive.

16 (b) (1) Whenever in any school year the average daily
17 attendance in all of the schools of a district for the first six months
18 in which school is in session has declined below the corresponding
19 period of either of the previous two school years, whenever the
20 governing board determines that attendance in a district will decline
21 in the following year as a result of the termination of an interdistrict
22 tuition agreement as described in Section 46304, whenever a
23 particular kind of service is to be reduced or discontinued not later
24 than the beginning of the following school year, or whenever the
25 amendment of state law requires the modification of curriculum,
26 and when in the opinion of the governing board of the district it
27 has become necessary by reason of any of these conditions to
28 decrease the number of permanent employees in the district, the
29 governing board may terminate the services of not more than a
30 corresponding percentage of the certificated employees of the
31 district, permanent as well as probationary, at the close of the
32 school year. Except as otherwise provided by statute, the services
33 of a permanent employee shall not be terminated under the
34 provisions of this section while any probationary employee, or any
35 other employee with less seniority, is retained to render a service
36 that the permanent employee is certificated and competent to
37 render.

38 (2) In computing a decline in average daily attendance for
39 purposes of this section for a newly formed or reorganized school
40 district, each school of the district shall be deemed to have been

1 a school of the newly formed or reorganized district for both of
2 the two previous school years.

3 (3) As between employees who first rendered paid service to
4 the district on the same date, the governing board shall determine
5 the order of termination solely on the basis of needs of the district
6 and the pupils, including distinctions based upon performance
7 evaluations. Upon the request of any employee whose order of
8 termination is so determined, the governing board shall furnish in
9 writing no later than five days prior to the commencement of the
10 hearing held in accordance with Section 44949, a statement of the
11 specific criteria used in determining the order of termination and
12 the application of the criteria in ranking each employee relative to
13 the other employees in the group. This requirement that the
14 governing board provide, on request, a written statement of reasons
15 for determining the order of termination shall not be interpreted
16 to give affected employees any legal right or interest that would
17 not exist without such a requirement.

18 (c) Notice of termination of services shall be given before the
19 May 15 in the manner prescribed in Section 44949, and services
20 of employees shall be terminated in the inverse of the order in
21 which they were employed, as determined by the board in
22 accordance with Sections 44844 and 44845. In the event that a
23 permanent or probationary employee is not given the notices and
24 a right to a hearing as provided for in Section 44949, he or she
25 shall be deemed reemployed for the ensuing school year.

26 (d) Notwithstanding subdivision (b), and except as specified in
27 subdivision (e), a school district may deviate from terminating a
28 certificated employee in order of seniority for any of the following
29 reasons:

30 (1) The district demonstrates a specific need for personnel to
31 teach a specific course or course of study, or to provide services
32 authorized by a services credential with a specialization in either
33 pupil personnel services or health for a school nurse, and that the
34 certificated employee has special training and experience necessary
35 to teach that course or course of study or to provide those services,
36 which others with more seniority do not possess.

37 (2) For purposes of maintaining or achieving compliance with
38 constitutional requirements related to equal protection of the laws
39 as it applies to pupils.

1 (3) On the basis of performance evaluations, if pursuant to a
2 process whereby employees with superior evaluations are retained
3 over those with inferior evaluations. The governing board may
4 exercise its discretion in developing the process, which shall be
5 applied uniformly to the entire class that is subject to the reduction
6 in force.

7 (4) On the basis that the employee is assigned to a schoolsite
8 that has been selected by the governing board for exemption from
9 certificated reductions in force, based upon the needs of the
10 educational program.

11 (e) A school district shall not deviate from terminating a
12 certificated employee in order of seniority if the employee has 18
13 months or less from his or her date of retirement, or is on medical
14 leave.

15 SEC. 6. Section 44955.1 is added to the Education Code, to
16 read:

17 44955.1. Notwithstanding any other law, a school district,
18 county office of education, or charter school may assign, reassign,
19 and transfer teachers and administrators based on effectiveness
20 and subject matter needs without regard to years of service.

21 SEC. 7. Section 44955.2 is added to the Education Code, to
22 read:

23 44955.2. A school district that deviates from the order of
24 seniority for purposes of terminating a certificated employee under
25 any provision of this chapter shall do so on the basis of one or
26 more of the items specified in subdivision (d) of Section 44955,
27 and shall not take into consideration whether an employee has
28 exercised any of the rights guaranteed under Chapter 10.7
29 (commencing with Section 3540) of Division 4 of Title 1 of the
30 Government Code.

31 SEC. 8. Section 44956 of the Education Code is amended to
32 read:

33 44956. A permanent employee whose services have been
34 terminated as provided in Section 44955 shall have the following
35 rights:

36 (a) For the period of 39 months from the date of the termination,
37 any employee who in the meantime has not attained the age of 65
38 years shall have the preferred right to reappointment, in the order
39 of original employment as determined by the board in accordance
40 with Sections 44831 to 44855, inclusive, if the number of

1 employees is increased or the discontinued service is reestablished,
2 with no requirements that were not imposed upon other employees
3 who continued in service; provided, that no probationary or other
4 employee with less seniority shall be employed to render a service
5 that the employee is certificated and competent to render. However,
6 prior to reappointing any employee to teach a subject which he or
7 she has not previously taught, and for which he or she does not
8 have a teaching credential or which is not within the employee's
9 major area of postsecondary study or the equivalent thereof, the
10 governing board shall require the employee to pass a subject matter
11 competency test in the appropriate subject.

12 (b) The aforesaid right to reappointment may be waived by the
13 employee, without prejudice, for not more than one school year,
14 unless the board extends this right, but the waiver shall not deprive
15 the employee of his or her right to subsequent offers of
16 reappointment.

17 (c) Notwithstanding subdivision (a), a school district may
18 deviate from reappointing a certificated employee in order of
19 seniority for either of the following reasons:

20 (1) The district demonstrates a specific need for personnel to
21 teach a specific course or course of study, or to provide services
22 authorized by a services credential with a specialization in either
23 pupil personnel services or health for a school nurse, and that the
24 employee has special training and experience necessary to teach
25 that course or course of study, or to provide those services, which
26 others with more seniority do not possess.

27 (2) For purposes of maintaining or achieving compliance with
28 constitutional requirements related to equal protection of the laws
29 as it applies to pupils.

30 (d) For an employee who is reappointed, the period of his or
31 her absence shall be treated as a leave of absence and shall not be
32 considered as a break in the continuity of his or her service, he or
33 she shall retain the classification and order of employment he or
34 she had when his or her services were terminated, and credit for
35 prior service under any state or district retirement system shall not
36 be affected by the termination, but the period of his or her absence
37 shall not count as a part of the service required for retirement.

38 (e) During the period of an employee's preferred right to
39 reappointment, the employee, in the order of original employment,
40 shall be offered prior opportunity for substitute service during the

1 absence of any other employee who has been granted a leave of
2 absence or who is temporarily absent from duty; provided, that his
3 or her services may be terminated upon the return to duty of the
4 other employee and that the substitute service shall not affect the
5 retention of his or her previous classification and rights. If, in any
6 school year the employee serves as a substitute in any position
7 requiring certification for 21 days or more within a period of 60
8 schooldays, the compensation the employee receives for substitute
9 service in that 60-day period, including his or her first 20 days of
10 substitute service, shall not be less than the amount the employee
11 would receive if he or she were being reappointed.

12 (f) Notwithstanding subdivision (e), a school district may deviate
13 from the order of seniority in offering the opportunity for substitute
14 service for either of the following reasons:

15 (1) The district demonstrates a specific need for personnel to
16 teach a specific course or course of study, or to provide services
17 authorized by a services credential with a specialization in either
18 pupil personnel services or health for a school nurse, and the
19 employee has special training and experience, and has demonstrated
20 the competency necessary to teach in a specified grade level or
21 course of study, or to provide those services, that others with more
22 seniority do not possess or are not able to provide.

23 (2) For purposes of maintaining or achieving compliance with
24 constitutional requirements related to equal protection of the laws
25 as it applies to pupils.

26 (g) (1) During the period of the employee's preferred right to
27 reappointment, the governing board of the district, if it is also the
28 governing board of one or more other districts, may assign the
29 employee to service that he or she is certificated and competent
30 to render, in one of the other districts. The compensation the
31 employee receives, in the discretion of the governing board, may
32 be the same as the employee would have received had he or she
33 been serving in the district from which the employee's services
34 were terminated. The employee's service in the other district or
35 districts shall be counted toward the period required for both state
36 and local retirement as though rendered in the district from which
37 the employee's services were terminated. The employee shall not
38 displace any other permanent employee in the other district or
39 districts.

1 (2) It is the intent of this subdivision that the employees of a
2 school district, the governing board of which is also the governing
3 board of one or more other school districts, shall not be at a
4 disadvantage as compared with employees of a unified school
5 district.

6 (h) At any time prior to the completion of one year after the
7 employee's return to service, the employee may continue or make
8 up, with interest, his or her own contributions to any state or district
9 retirement system for the period of his or her absence, but it shall
10 not be obligatory on the state or district to match the contributions.

11 (i) If the employee becomes disabled or reaches retirement age
12 at any time before his or her return to service, the employee shall
13 receive, in any state or district retirement system of which the
14 employee was a member, all benefits to which he or she would
15 have been entitled if the disability or retirement occurred at the
16 time of his or her termination of service, plus any benefits the
17 employee may have qualified for thereafter, as though still
18 employed.

19 SEC. 9. If the Commission on State Mandates determines that
20 this act contains costs mandated by the state, reimbursement to
21 local agencies and school districts for those costs shall be made
22 pursuant to Part 7 (commencing with Section 17500) of Division
23 4 of Title 2 of the Government Code.